

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 261 of 1997
with
COMPANY PETITION No 262 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

DENIM FASHIONS LIMITED

Versus

SNEHAL HOLDINGS PVT. LTD.,

Appearance:

MR SN SOPARKAR for Petitioner

MR BN KESHWANI for Respondent No. 1

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 19/12/98

ORAL JUDGEMENT

Heard Mr.Soparkar for the petitioner company in both these matters which is the same company. Respondents in these two matters are Snehal Holdings Pvt. Ltd. and Gujarat Oil & Industries Ltd. respectively. Mr.Keshwani appears for the respondent companies

belonging to the same group which is also known as Oiland Group.

2. The case of the petitioner in Company Petition No.261 of 1997 is that on 2.7.1994 the petitioner company kept a deposit of Rs.25,000/- with the respondent. It subsequently kept a deposit of Rs.10 lacs on 4.7.1994. The case of the petitioner in Company Petition No.262 of 1997 is that the petitioner company kept deposits with the respondent company of three different amounts as follows:

Date	Amount
------	--------

12.5.1994	Rs. 5,00,000
04.8.1994	Rs. 2,00,000
10.8.1994	Rs.14,00,000

The principle defence of the respondent companies is that the amounts of Rs.10,25,000 received by Snehal Holdings Pvt. Ltd. and the amount of Rs.14 lacs received by Gujarat Oil & Industries Ltd. in the second matter were towards the share money and the amount of Rs.5,00,000 and Rs.2,00,000 received by Gujarat Oil & Industries Ltd. in the second matter was towards the various expenses incurred by the respondent company. These expenses are supposed to have been incurred on account of office premises, personnel and other services made available by the respondent company. As far as these expenses are concerned, Mr.Keshwani relies upon the statement annexed at Annexure-2 to the further affidavit-in-rejoinder filed by Mr.Rajesh Dhruva affirmed on 26.7.1998 wherein in the centre of the annexure various amounts debited totalling to Rs.90,000 are mentioned. Another petition for similar claim of Rs.3,00,000 being Company Petition No.260 of 1997 filed by this petitioner company against another sister concern of this group known as Speciality Petrolubes Limited has been rejected by me accepting the probability of the defence with respect to these expenses by the order passed today. In the circumstances, as far as the defence with respect to the amounts of Rs.5,00,000 and Rs.2,00,000 claimed in Company Petition No.262 of 1997 is concerned, it cannot be brushed aside as without any substance.

3. As far as the claims of the amount of Rs.10,25,000 in Company Petition No.261 of 1997 and the remaining amount of Rs.14,00,000 in Company Petition No.262 of 1997 are concerned, Mr.Keshwani submits that, firstly, there is no document of any deposit produced by the petitioner though these deposits are supposed to have

been made way back in the year 1994. There is no demand of any interest made by the petitioner on these amounts if these amounts are kept as deposit almost for a period of three years by the time the notice was sent. It is an accepted position that the Chairman of the petitioner company and the present Chairman of the respondent company were having cordial relations until these difficulties cropped up. In fact, the Chairman of the respondent company was the Chairman of the petitioner company until 11.10.1995. In both these matters, notices demanding the amount concerned were issued on 6.6.1997. A reply was sent on 20.6.1997 wherein it was categorically stated that the petitioner company had subscribed to the shares of the respondent company by making those payments and that the shares are allotted and kept ready since 1.4.1996 but, due to preoccupation of one Rajesh Dhruva, the Director of the petitioner company, he did not turn up to take delivery of those shares and the same were lying undelivered since it is with the respondent company. Instead of replying further to the notices, the petitioners in both the matters have chosen to file these petitions. They have not annexed the replies to the petitions and the aforesaid replies to both these notices have come on record along with the affidavits-in-reply opposing the petitions. Along with the affidavits-in-reply, the respondents have also annexed a letter dated 2.1.1996 written by the above-referred Rajesh Dhruva bearing outward No.DENIM/RHD/2.1.96 to the Chairman of the respondent company. The Resolution passed by the respondent company in their meeting held on 1.4.1996 allotting shares is also annexed at Annexure-E to the affidavit-in-reply in Company Petition No.261 of 1997. In Company Petition No.261 of 1997, an affidavit-in-rejoinder has been filed by Mr.Rajesh Dhruva to which he has enclosed Return of Allotments pursuant to Section 75 (1) of the Companies Act, 1956 made by Snehal Holdings Pvt. Ltd. which is dated 30.4.1996 though it is lodged with the office of the Registrar of Companies on 30.6.1997.

4. Mr.Soparkar, learned Counsel appearing for the petitioners in both the petitions submits that the submission that this payment was made for allotment of shares is an afterthought; the petitioners very much dispute that any such resolution was passed on 1.4.1996; and under the law if any such resolution is passed at that time it was expected to be notified to the Registrar of Companies within 30 days thereof. It is his submission that the return of allotments as also the resolution are both backdated documents. He states that no explanation has been given as to why the allotment was

not made from 1994 to 1996 assuming but without conceding that such a resolution was passed on 1.4.1996. Mr.Soparkar submits that, admittedly, the amount has been received by the respondents, whether there is any interest provided thereon or not and, that being so, the petitioners were entitled to receive back those amounts.

5. Mr.Keshwani points out that the relations between the parties all throughout have been cordial. Mr.Keshwani further points out that, as affirmed in para 12 of the affidavit of the respondent company opposing the petitions, the respondent group company had contributed capital of in all Rs.21.50 lacs by subscribing shares of the petitioner company. They had also provided their own office and factory for the activities of the petitioner company. The petitioner company had also subscribed to the share capital of the respondent company, as contended by the respondent, to the extend of Rs.10.25 lacs as far as Company Petition No.261 of 1997 is concerned and Rs.14 lacs insofar as Company Petition No.262 of 1997 is concerned. It is also stated in the further affidavit-in-rejoinder dated 4.4.1998 that both the group of companies had not made the necessary formal applications in writing for allotment of shares. Mr. Keshwani points out that though an affidavit to controvert this further affidavit is filed, the aforesaid fact is not controverted.

6. Mr.Keshwani, therefore, submits that it is only on account of the resignation of the Chairman of the respondent company, one Harishbhai Shah (who was earlier the Chairman of the petitioner company) on 11.10.1995 from the Chairmanship of the petitioner company that the aforesaid Rajesh Dhruva has written the letter dated 2.1.1996 to the aforesaid Harishbhai Shah. In that letter, he has specifically sought the following information:

1. Detailed accounts of Oiland Group vis-a-vis Denim Fashions.
2. List of shares of Oiland Group & SDFC and delivery of the said shares with transfer deeds.
3. Shares of Ashok Dhruva Group.
4. Detailed list of partly paid shares - Pref. floppy (Rajatkumar had sent floppy of all shareholders which was since returned).

5. Public issue records.

6. Records of shareholders - incl.
signature cards etc.

7. Minutes of Board and Members.

8. Other relevant documents and files.

Mr.Keshwani submits that it is true that although the aforesaid amounts were received by the respondent companies in 1994, the allotment has come to be made only after receiving its letter and the necessary resolution in that behalf was passed on 1.4.1996. That resolution is for other shareholders also. He accepts that there is undoubtedly delay in filing Return of Allotments. He, however, submits that the issuance of the letter dated 2.1.1996 is not disputed by the petitioner. The letter does not in any way state that the information referred to in that letter is concerning any personal shares either of Mr. Rajesh Dhruva or Mr. Ashok Dhruva. Besides, when Mr.Harishbhai Shah was no longer the Chairman of the petitioner company and when so much of information was sought, nothing was stated about the alleged deposit assuming that the amount was paid towards deposits and not for shares as claimed by the petitioner.

7. In the circumstances narrated above, in my view, the respondents have raised a triable issue for not returning the amount which has been claimed by the petitioners and hence these cases would not fall under Section 433 read with Section 434 of the Companies Act, 1956. Both these petitions are rejected.

(KMG Thilake)

#####